

# EXHIBIT 31

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DETENTION WATCH NETWORK and  
CENTER FOR CONSTITUTIONAL RIGHTS

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT and UNITED  
STATES DEPARTMENT OF HOMELAND  
SECURITY,

Defendants.

**14 Civ. 583 (LGS)**

DECLARATION OF  
DAVID J. VENTURELLA

I, David Venturella, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Senior Vice President, Business Development of The GEO Group, Inc. ("GEO"). My duties include responsibility for leading GEO's business development and proposal efforts in response to Requests for Proposal ("RFP") for GEO's Contract Detention Facilities ("CDFs"), which includes RFPs from Immigration Customs Enforcement ("ICE"), Federal Bureau of Prisons ("BOP"), U.S. Marshals Service ("USMS") and several state correctional clients and various County and City jurisdictions. This declaration is based on my personal knowledge in my capacity as the person responsible for proposals at GEO and as described herein.
2. I have been at GEO since 2012 and previously was employed at ICE for 22 years, where I held various positions, including positions in Secure Communities and Enforcement and Removal Operations, among other departments.

**COMPANY BACKGROUND**

3. Since GEO was founded in 1984, it has provided secure corrections and detention management services to government clients in the United States and internationally.

4. GEO currently operates 12 detention facilities of different types for ICE. GEO also provides these services for the BOP, USMS, several State correctional clients, various county and city jurisdictions. In the United States, GEO currently oversees the operation of approximately 75,000 beds in 64 correctional and detention facilities comprising the sixth largest correctional system in the United States.
5. GEO currently provides detention services for ICE as prime contractor at the following CDFs: South Texas Detention Complex, Rio Grande Detention Center, Northwest Detention Center, Aurora ICE Processing Center, and Broward Transition Center.
6. GEO also serves as a subcontractor to counties or cities for the following Inter-Governmental Service Agreements (IGSA) that provide detention services for ICE: Adelanto Detention Facility, Joe Corley Detention Facility, Karnes County Family Residential Unit, LaSalle Detention Center, South Louisiana Correctional Center, Mesa Verde Detention Facility, and Alexandria Staging Facility.
7. ICE began its detention program in the early 1980s with contractors using hotels and motels for secure residential care, but the detention model changed significantly after a Supreme Court ruling regarding the standards of detention for immigration detainees.
8. Thereafter, ICE adopted the detention standards of the American Correctional Association (ACA). This necessitated the construction of new facilities that met those standards and were located in areas of the country that were important to ICE enforcement and detention planning. With the new ICE/ACA detention standards in place, ICE began issuing new RFPs which applied the new standards and resulted in capital-intensive investments by the Proposers.

9. Today, there are over 250 public and private detention facilities that provide contract detention services for approximately 34,000 ICE detainees.

#### **SAMPLE CONTRACT**

10. I have reviewed the Vaughn Index (Docket # 69) filed by ICE and DHS in this proceeding and identified a GEO contract as one of the samples for use in this litigation. GEO was awarded contract number HSCEDM-09-D-00006 (the "GEO Contract") to provide detention services at the Broward Transition Center in Deerfield Beach, Florida. The sample contract document included in the Vaughn Index, labeled as Contract Document 1, represents a September 28, 2011 modification of the GEO Contract to provide funding for transportation and detention bed days for ICE detainees.
11. The GEO Contract is a typical ICE detention service contract providing a 1-year base term plus four 1-year options beginning 04/01/2009. It was a new contract awarded to GEO following an open competition in response to Solicitation No.: HSCEDM-09-R-00005. The solicitation required bidders to submit a comprehensive proposal to be evaluated on three factors: 1) Demonstrated Technical/Management Capability, 2) Past Performance, and 3) Price/Cost and explained that "overall cost could be the ultimate determining factor for award as proposals became more equal based on other factors." I am not aware whether other proposals were submitted by other companies for this RFP.

#### **PRICING INFORMATION AND STAFFING PLANS**

12. A bed-day, or per diem, rate is the daily rate paid by the government to a contractor for the comprehensive secure residential care of detainees at a CDF. The bed-day rate broadly includes all daily operating costs of the facility, including personnel, food, health care, supplies, utilities, maintenance, infrastructure depreciation, cost of capital, overhead, and profit. Of these costs, the largest single cost is for personnel, representing



approximately 65% of the total facility costs. The labor costs are calculated based on the application of the company's proprietary staffing plan to the design and operation of the facility, with personnel positions priced in accordance with the minimum wages and benefits set forth in the Department of Labor ("DOL") wage determination issued for that particular RFP and the geographical area that facility will serve. Each company has its own proprietary approach to staffing based upon its analysis of the RFP Work Statement requirements, company philosophy and operational policies.

13. The bed-day rates and staffing plans contained in the contractor's proposal or bid are incorporated into the final contract, unless they are revised as a result of subsequent negotiations with ICE. Over the duration of the contract, there are often minor modifications that may adjust the bed-day rate and overall contract pricing.
14. A facility staffing plan contains every position that the contractor intends to employ or retain for the operation of the facility and includes the shift that position will be required to work (generally, morning, afternoon or night), relief factor (reflecting the number of persons required to fill each position taking into account whether the position is a part-time or full-time (5 or 7 day) post and how many company specific sick days, vacation days, jury duty days, *etc.*, must be taken into account in the relief factor calculation for each position), whether the position is a "fixed" or "static" post, the hourly or annual wage to be paid for each such position, and the payroll tax and benefit costs for each position. Every one of these calculations and considerations can and will affect the overall cost calculation associated with a facility's labor costs. Inasmuch as the labor costs are such a major part of the overall facility pricing, these models are highly

proprietary and confidential. GEO's proposed staffing plans submitted with its bid become part of its contract.

### **COMPETITION FOR GOVERNMENT CDF AND IGSA CONTRACTS**

15. Solicitations for contract detention services typically require bidders to submit a comprehensive Technical Response (to include Operational Procedures and Policies, detailed Staffing Plans, Facility Design Plans and Physical Plant Descriptions), detailed Pricing/Cost information, and Past Performance information. When all other factors are more or less equal, the government will base the award on the overall cost.
16. The winning proposal in almost every Federal procurement competition is awarded to the lowest priced bidder, unless that bidder has an unsatisfactory performance record.
17. Historically, there has always been active competition between detention service providers for CDF contracts. This competition between providers dates back to the first such CDF RFP in 1983/1984 for a 300 bed secure residential care facility in the Houston, Texas area which cost several millions of dollars. Another RFP the following year was issued for the Laredo, Texas area in which GEO competed against CCA but lost based on not having the lowest per diem rate.
18. In addition to GEO, there are six other active private competitors in the ICE and BOP contract detention facility market; namely: Corrections Corporation of America (CCA), Management and Training Corporation (MTC), Community Education Centers (CEC), Emerald Correctional Management (Emerald), LaSalle, and MVM Inc. (MVM). While GEO and CCA collectively have the overwhelming majority of the ICE CDF detention market, both companies compete with these other smaller companies on a regular basis.
19. GEO currently provides contract detention facility services to ICE, the BOP and USMS, as well as 11 state correctional clients and various county and city jurisdictions. GEO's



competitors in these markets include: CCA; MTC; CEC; Emerald; as well as several smaller providers. ICE, BOP and USMS do not identify the competing companies related to any particular solicitation. Only the successful bidder is identified.

20. Based on my information and belief, there are four factors that affect competition for ICE CDF contracts. First, ICE identifies a restricted geographic radius (typically 50 miles) in reasonable proximity to the permanent ICE Field Office, or an airport that ICE uses for detainee transportation. Such locations and participating airports are relatively static but nonetheless drive the geographic requirements for the proposed CDF. Second, the prescribed ICE geographic area (the acceptable radius) is regulated by local county and city ordinances that restrict the establishment of such a facility and are subject to vocal opposition by neighboring residents. Third, CDFs are capital-intensive and typically cost several tens of millions of dollars due to ICE's objectives in achieving economies of scale pricing through larger facilities, and the application of the new ICE 2011 Performance Based National Detention Standards. And fourth, the typical contract term of one base year plus several one year options creates a very risky investment thesis for many potential competitors.

21. Examples of competitive contracts in the DHS/ICE market include the following:

- 2015 CDF in Houston area – Known Competitors: GEO, CCA, Emerald
- 2013 Southern Border Transportation<sup>1</sup> - Known Competitors: GTI, G4S, two others (GEO lost; price and staffing plan were determining factors)
- 2011 Migrant Operations Center in GTMO<sup>2</sup> - Known Competitors: GEO, MVM (GEO lost; price was the determining factor)
- 2003 CDF in the Miami Area (Broward) - Known Competitors: GEO, CSC

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<sup>1</sup> A transportation contract to bus detainees from one facility to another and to release points on the U.S. border.

<sup>2</sup> An ICE detention facility in Cuba for the housing of Cuban or Haitian refugees picked up by the Coast Guard, for which GEO was the incumbent provider and lost a competitive rebid in 2011.

22. Examples of competitive contracts in other markets include:

- BOP Criminal Alien Requirement (CAR) 16<sup>3</sup> - (RFP issued January 2015) - Known Competitors: GEO, CCA, and MTC (in progress)
- BOP Criminal Alien Requirement (CAR) 15 (extremely competitive RFP with private operators competing for rebid of same population with only one facility allowed to retain contract) – (RFP issued June 2013) - Known Competitors: GEO, CCA, and MTC
- BOP Short Term Sentenced – (RFP issued May 2010) - Known Competitors: GEO, CCA, MTC, others (GEO lost; price was determining factor)
- OFDT/USMS Las Vegas area detention facility - (RFP issued June 2007) - Known Competitors: GEO, CCA, others (GEO lost; price was determining factor)
- Florida (state facility): Bay, Moore Haven, Graceville facilities – (RFP issued October 2012) - Known Competitors: GEO, CCA, MTC (GEO won; price was determining factor)
- Texas (state facility): Correctional Centers – (RFP issued December 2014) - Known Competitors: GEO, MTC, CCA, others (GEO lost; price was determining factor)
- Arizona (state facility): 2,000 bed facility – (RFPs issued February 2012 and September 2015) - Known Competitors: GEO, CCA, MTC, Emerald

23. ICE also obtains detention services under IGSA's awarded to counties and cities. ICE selects specific facilities, in some cases, between competing city or county facilities that are geographically close to each other. While the IGSA process is not as formal and structured as a competitive procurement, the evaluation and award of an IGSA are based on similar factors – i.e., detention capacity, compliance with national detention standards and ICE policy and procedures, the level and types of services provided and most importantly, the daily per diem rate/cost. Subcontracts to provide services as an operator on behalf of a county or city under an IGSA can also be competitively bid. As an example, in October 2003, GEO responded to a county RFP to provide management

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<sup>3</sup> BOP's Criminal Alien Requirement, or CAR, solicitations are, with very few exceptions, intended for housing low security criminal aliens and the facilities are established based on geographic locations, e.g., (CAR) 15.



services for the Reeves County Detention Center. GEO was selected to manage the Reeves County Detention Complex, which at the time provided services to BOP under an IGSA. Similarly in 2007, GEO responded to a RFP to provide maintenance and operation of a detention facility to house Federal prisoners for Montgomery County, Texas. GEO was selected and currently serves as the subcontracted operator for the Joe Corley Detention Facility.

#### **LIKELIHOOD OF COMPETITIVE HARM**


24. The disclosure of GEO's proprietary bed-day rates and staffing plans would result in substantial competitive financial harm to GEO. If a competitor obtained GEO's bed-day rates and staffing plans, in combination with the publically available DOL wage rates and benefits, it could reverse engineer components of GEO's cost and pricing structure and use this relative comparison to identify GEO's pricing model. The bed-day rate broadly includes all daily operating costs of the facility, including personnel, food, health care, supplies, utilities, maintenance, infrastructure depreciation, cost of capital, overhead, and profit. A staffing plan is the most important component of a contractor's overall pricing model because the costs associated with the overall staffing of a facility constitute approximately 65% or more of the facility's total operating costs. A competitor could develop a cost model of the staffing component of GEO's bed-day rate as described in paragraph 14 above. It could then identify the relative percentages of the remaining approximately 35% in direct and indirect costs, with a percentage breakdown estimate of GEO's food, health care, supplies, utilities, maintenance, infrastructure depreciation, cost of capital, overhead, and profit.
25. With this information, a competitor could make broad comparisons between its proposed labor costs for the facility at issue and GEO's anticipated costs based on the proprietary

staffing plan. If GEO's costs are lower, the competitor will understand that it must lower its labor costs in order to beat GEO. The same analysis could be broadly conducted for GEO's food, health care, supplies, utilities, maintenance, infrastructure depreciation, cost of capital, overhead, and profit components, with the same result – the competitor could develop an idea of where and how it could undercut GEO on cost and pricing.

26. With the benefit of the redacted staffing/pricing information, the larger companies would have the financial means to fund replacement facilities (that will cost from \$50 million to over \$100 million) that are presently operated by the smaller (and, in some cases, the larger private) companies to successfully win the contract award from the incumbents.
27. In some procurements, GEO has no competition for CDF solicitations and in other procurements for CDF solicitations, it faces competition. In both situations, GEO's pricing strategy, based on a proprietary staffing plan, is the same. GEO's competitors would use GEO's bed-day rates and staffing plans in the manner described in paragraph 24 to underbid GEO in the competitive procurements, thereby harming GEO.
28. Even with access to their larger competitors' staffing plans, the smaller private companies do not have access to the capital needed to compete to win a large facility.
29. The smaller private companies probably cannot withstand a single lost contract which will severely impact their access to the capital markets and to even make payroll.
30. The loss of contracts by smaller public organizations (i.e., local government entities) to larger public organizations will lead to a collapse in the availability of revenue bond financing that has been the consistent financial vehicle for funding public sector detention/correction facilities.

31. Therefore, I believe the first stage of the adverse impact of disclosure of the redacted information would be a reduction or elimination of competition by the smaller entities, private and public.
32. The second stage would be acrimonious competition between the larger organizations, public and private, that will very likely lead to their withdrawal from the detention market as well, thereby leaving ICE with no viable detention service providers.
33. The larger private companies, including GEO, will likely experience mutual loss of significant contracts over a period of time.
34. It will not require but a few major lost contracts before even the largest detention/correction operators withdraw from the marketplace under their own initiative or at the insistence of their shareholders.
35. Therefore, the ultimate outcome of releasing the ICE records pursuant to the Plaintiff's FOIA request will be not only substantial competitive injury to The GEO Group but to all other detention facility providers, both public and private.

Dated: December 22, 2015  
Boca Raton, Florida

  
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David J. Venturella